

SUPREME COURT OF QUEENSLAND

CITATION: *Masson v State of Queensland* [2019] QCA 188

PARTIES: **THE ESTATE OF THE LATE JENNIFER LEANNE MASSON**
(appellant)
v
STATE OF QUEENSLAND
(respondent)

FILE NO/S: Appeal No 8805 of 2018
SC No 306 of 2005

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application – Civil – Further Orders

ORIGINATING COURT: Supreme Court at Cairns – [2018] QSC 162 (Henry J)

DELIVERED ON: 13 September 2019

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Fraser and McMurdo JJA and Boddice J

ORDERS:

- 1. The respondent is to pay the appellant the amount of \$3,179,384, inclusive of interest until judgment.**
- 2. The respondent is to pay interest under s 59 of the *Civil Proceedings Act 2011 (Qld)* in the sum of \$616.44 per day from 10 May 2019, until payment.**
- 3. The respondent is to pay the appellant’s costs of the proceeding in the trial division, including reserved costs, to be assessed, if not agreed, on the indemnity basis.**
- 4. The respondent is to pay the appellant’s costs of the appeal to be assessed, if not agreed, on the standard basis.**

CATCHWORDS: INTEREST – RECOVERABILITY OF INTEREST – AWARD OF INTEREST AS DAMAGES – IN QUEENSLAND – where there was no judgment in favour of the plaintiff at first instance, but judgment was given to the plaintiff by the Court of Appeal – where the parties, after receiving judgment in the appeal, jointly proposed orders as to the amount the plaintiff should be given judgment – where those proposed orders included an order that post-judgment interest be calculated from the date of the trial judgment – whether post-judgment interest should accrue from the date of the Court of Appeal’s judgment, instead of the date of the trial judgment – whether the court can otherwise give effect

to the agreement between the parties

Civil Proceedings Act 2011 (Qld), s 59

Rogers v Brambles Australia Ltd [1998] 1 Qd R 212; [1996] QCA 437, followed

COUNSEL: No appearance by the appellant, the appellant's submissions were heard on the papers
No appearance by the respondent, the respondent's submissions were heard on the papers

SOLICITORS: RMB Lawyers for the appellant
Crown Law for the respondent

- [1] **THE COURT:** On 10 May 2019, the Court gave judgment in this appeal, ordering that the appeal be allowed, the orders made by the trial judge be set aside and that the parties file and exchange written submissions as to the amount for which the appellant should be given judgment and as to the costs of the appeal and in the trial division.¹ In his judgment, the trial judge had recorded that “quantum” was agreed in the amount of \$3,000,000.²
- [2] This Court received a submission from the parties, which included an agreed form of judgment. The proposed orders for costs were appropriate. But there was a complication as to what should be ordered for interest.
- [3] The parties proposed that there be orders that the respondent pay to the appellant \$3,000,000 as “agreed damages, including interest up to judgment”, and that it pay interest “after judgment”, under s 59 of the *Civil Proceedings Act* 2011 (Qld), in the sum of \$616.44 per day, calculated from 23 July 2018, which was the date on which the judgment under appeal was delivered.
- [4] In a case such as this, where there was no judgment in favour of the plaintiff at first instance, but judgment is given to the plaintiff by the Court of Appeal, interest under s 59 accrues only from the date of this Court's judgment: *Rogers v Brambles Australia Ltd*.³ Consequently the parties were asked to reconsider what they had proposed for interest and to provide further submissions by 19 June 2019.
- [5] Further submissions on the question were received. For the respondent, initially it was submitted that interest under s 59 should accrue from the date of this Court's judgment on that sum of \$3,000,000. There was a delay in the receipt of submissions for the appellant. Subsequently, there were further submissions for the respondent, from which it appears that the parties are agreed that, by some means, the sum of \$616.44 per day should accrue from the date of the judgment in the trial division.
- [6] In the Court's view, effect can be given to that agreement by giving judgment to the appellant for an amount consisting of \$3,000,000 plus \$179,384, which is the

¹ *Masson v State of Queensland* [2019] QCA 80.

² *Masson v State of Queensland* [2018] QSC 162 at [3].

³ [1998] 1 Qd R 212; [1996] QCA 437 per Pincus JA referring to *L Shaddock & Associates v Parramatta City Council (No 2)* (1982) 151 CLR 590; [1982] HCA 59, *Nicol v Allyacht Spars Pty Ltd (No 2)* (1988) 165 CLR 306; [1998] HCA 48, *Schultz & Anor v Official Trustee in Bankruptcy* [1989] QSCFC 140 and *Jorgensen v Olive* [1985] 2 Qd R 168; [1984] QSC 654.

amount of \$616.44 multiplied by the 291 days between the judgment of the trial judge and the judgment of this Court. Interest under s 59 would then be made payable in the sum of \$616.44 per day, from 10 May 2019. Under s 59(3) the interest is payable at the rate prescribed under a practice direction, unless the Court otherwise orders, which the Court would be doing in this case.

[7] The orders will be as follows:

1. The respondent is to pay the appellant the amount of \$3,179,384, inclusive of interest until judgment.
2. The respondent is to pay interest under s 59 of the *Civil Proceedings Act 2011* (Qld) in the sum of \$616.44 per day from 10 May 2019, until payment.
3. The respondent is to pay the appellant's costs of the proceeding in the trial division, including reserved costs, to be assessed, if not agreed, on the indemnity basis.
4. The respondent is to pay the appellant's costs of the appeal to be assessed, if not agreed, on the standard basis.